576 Did your father die?" They also avoid calling someone from a distance.

/12/ CHAPTER II.

The clan principle. - Custom

618 The enormous importance of the clan principle (1) stems from

1. On the clan origin as the most ancient stage of social development of all peoples, cf. Pervobytnoe Pravo /Primitive Law/ by Makim Kovalevskii, Moscow, 1886, Pt. 1. Clan.

[695] the law of force: the individual finds defence only in his clan. The clan answers for his transgressions. The propitiatory oath is imposed not on the responsible individual but on another person from his clan. (2)

2. Hence a man without a clan or a musafir always risks losing a case, being unable to procure his kinsmen to take the oath.

[672] The exaction of payment is also received not by the person but by
[628] the clan. When wergeld is not paid, not necessarily the murderer,
[587] but any person from his clan is killed. A bride belongs not to a
[429] person but to a clan. A widow goes to the nearest relative of the deceased, and a divorced woman must choose a new husband from the clan of her former husband. The nearest kinsman is always the guardian. Guests are received according to their degree of kinship.

The bearers of the clan principle are the rich men and the senior elders (aksakals). (3) Beyond the names of their direct ancestors and

3. Among the Sarts the aksakal is an administrative figure - a village elder. Among the Kazakhs he is the person in a given place who has the highest authority by blood.

their clan and lineage, the poor know nothing of the distant branches of their kin.

The volost administrators elected by the people retain their posts only when they belong to the strongest clan in the volost.

The decline of the clan principle is marked by frequent litiga-

631 kinsmen (1) are not brought in, but the people in the same village as
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•[672]

1. Note 1 to item 161 of the Draft of a code on the Administration of the Semirechie and Syr-Darya Regions: "If in the commission of a crime, damage is inflicted on state or private property, the guilty person, in addition to his personal penalty by law, is sentenced to compensate for the damage. In case of insolvency of the guilty person, the payment of the damages among the Kazakhs is referred to his kinsmen, on the basis of customs."

the defendant. Then, depending on the size of the fine, either the whole village takes part in the payment of the livestock, or only those 50 or 10 tents to which the defendant belongs; c) the transfer of nomads from one volost to another or from village to village takes place, for the most part, to acquire land rights for agriculture, since at present the nomadic population attaches very great importance to
[672] land use; d) the baranta /form of legal or approved private seizure of
579 livestock/ has now ceased to a great extent. Robberies are very few.
[694] After murders it is not necessary to go the place where the blood was shed to receive staisfaction. It is not necessary to revert to force for suits and offenses, since if satisfaction is not received, they can turn to the Russian authority, which will force the people's courts to try the the case and satisfy the plaintiffs. Therefore in all cases of this kind there is no need of seeking protection among kinsmen; e) Now there is no seizure of land by one clan from another, which might cause other clans to unite among themselves for purposes of defense.

631 In spite of all this, an attraction to their clans does exist,
618 although some clans belong to several volosts. This is supported by influential persons, the representatives of their clans, since the clan principle helps to maintain /15/ their importance among the people and helps in collecting a majority of votes in elections. (1) This

1. The persons of the native administration, /namely/ the volost administrators and the village elders, are elected by the people, and the appointment is confirmed by the oblast or uyezd administration.

attraction is stronger in those volosts which are composed almost exclusively of one clan, with villages from one branch. However in the villages kinship in the female line is acquiring great importance.

this for himself.

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/35/ In extremity, the father renounces his son, khatti bizar, bizar khatt, before witnesses. According to the Kirgiz Kurpetai Dauletkulov, the bii places his seal on the document (for khatti bizar actually means "a letter of renunciation"). The form of the renunciation is: "If you are killed, I will not demand wergeld for you. If you kill someone, I will not pay wergeld on your behalf." In spite of this statement, however, a father cannot evade the payment of [672] the wergeld for a murder committed by his son after that, unless, when he refuses to pay the wergeld, he permits his son to be killed as a punishment for the murder committed by him. A son who has been expelled by his father goes to one of his relatives.

Sometimes a daughter is given to an ishan or mullah (1) as an [782]

1. The Kirgiz bii Kurpetai Dauletkulov adds: there are cases when a sick father promises to give his daughter to his ishan if he recovers.

offering favorable to God (nazr), provided that he is not within the forbidden degree of kinship, and also sometimes to a blood brother.

It is said that under the pressure of poverty boys are sometimes sold in the Perovsk uyezd (for 20 sheep for example). The Kirgiz Kurpetai Dauletkulov states that now they do not sell children.

A daughter is not sold, for there is a possibility of marrying her off for a small kalym. Bii Sultan Kanev recalls that in a time of famine daughters were sold for 1 or 2 heads of livestock or for 20-30 fillias /monetary unit equal to about 3-4 rubles/, and after the famine was over they demanded before him, bii Sultan, the rest of the payment up to the full kalym. The bii awarded the rest of the payment up to the full kalym of the category of "7 kulundi biya (2) and 2

2. Kulundi biya is a mare with a suckling.

buidak." (3)

3. Buidak is a two year old sheep. On the kalym /bride price/, cf. Chapter VI.

According to customary law there can be no protest against

425 Among the Kirgiz a find belongs to the finder, with its division into parts for the witnesses of the find.

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422 577 Scrupulousness with regard to objects accepted for safe-keeping (amanat) is a moral obligation, but not a juridical one, as is evident from its name: "godly amanat" (kudai amanat). Therefore objects are given for safe-keeping only to persons one knows well, or to kinsmen.

422 685 672 Objects being kept in safe-keeping are returned to the owner on his first request. The owner beats the guilty person for their fraudulent loss and sale, calling him to account, as though for robbery. The keeper is not held responsible for an accidental loss, reported immediately to the elders or authorities. The Kirgiz have /123/ the same custom. For the undeclared loss of an object which was given without witnesses, an oath is required from the defendant or the plaintiff, if they are good people. On the basis of the oath they may or may not require the return of the object and the payment of court expenses, but there is no fine or other penalty. If the object was given before witnesses, the judgment is made without the oath. If expenses were connected with the acceptance of the objects for safe-keeping, these are paid by the owner.

If the person who has accepted the object requested it himself for temporary use, he pays the expenses connected with its transfer, also for the deterioration of the object from use, and for accidental damage and loss (for example, the loss of livestock during a snowstorm).

Cargo being conveyed by drivers is also considered something entrusted for safe-keeping. The loss of the cargo by a driver who has engaged himself to deliver it to its destination is equated with premeditated robbery, i. e., the value of the cargo is returned with a fine of double the value. In case the driver was forced by necessity to transfer the cargo to another person to deliver, he is freed from the responsibility, upon presentation of a receipt from this person.

If in a fire or other general calamity (tengri kazasy) only the amanat perished and no other property, the full value of it is required to be paid. If, however, the amanat and the property of the person keeping it both perished, then the latter either pays half its value, or else pays nothing at all (Perovsk and Auliye-Ata uyezds). An agreement is made concerning the degree of responsibility for the object

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489 /138/ Drivers (kerekesh tyuyekesh) are dependent upon caravan heads (karavanbashis) /keruanbasy/. The latter are of two kinds: 1) Well known (bel'gili) and influential (ulkun) persons, living in cities, where they give the merchants guarantees of the scrupulousness of the drivers; 2) persons who are less influential (kshi, ksi) who are placed first at the head of the caravans, and receive the invoices from them. In addition to these appointed karavanbashis, the leaders of the caravans are usually also the best people in general among the drivers.

The drivers can transfer their licenses /bilet/ to the leader of the caravan, even though each has his own camels and a special cargo.

The karavanbashis go in advance.

The custom among the urban karavanbashis to help the drivers out with favors (yagalsyb salu) until they find work, also exists among the Kazakhs. (Torgai and Umurbek).

Merchants can send their cargo without the use of karavanbashis, by drivers who have guarantors. Before sending the cargo, the merchants and the drivers, or karavanbashi in their place, exchange written bonds on the quantity of the cargo, the price of the shipping, and the time of delivery.

The karavanbashis cannot abolish the low wage established for one of the drivers, to the detriment of another.

The karavanbash chooses the time and place for halts and spending the night. He settles arguments between drivers on the road. He forces them to pay debts and imposes fines for stealing. Occasionally heavy corporeal punishment is arranged, which is administered standing, not lying down, and for this there can be no complaint. Umurbek admits even that if there is disagreement between the karavanbash and the collective opinion of the drivers he must be obeyed, although in such cases it is difficult for him to get his own way.

489 672 685 According to the old customary law, the drivers had to pay damages even without a preliminary agreement, on the basis of the rules of acceptance for safe-keeping.[1] According to the new customary law those who are not obligated by signature, the affixing of a seal and stamp /tamga/ do not pay. The exhaustion /139/ of the camels and their falling down is not taken into consideration by the sender of the cargo. The losses are born by the driver. He changes the tired camels for fresh ones, or buys others, changes the loads of the fallen animals onto other camels, etc.

According to Torgai and Umurbek, a driver is not responsible to

1. [Cf. cat. 116, p. 109 -- A.]

the owner of a camel, when he has rented it for money (kere) from an outsider, and it falls, for some reason or other than its load being too heavy. But he is responsible for a camel which was taken for use without pay. However, they rarely pay in full (tutas), for the bii takes into consideration the fact that the camel was given on the basis of acquaintanceship, and arranges an agreement for 1/2, 1/4 or one-eighth the value of the animal. The demand in court for the full value of the camel would be a manifest rupture of the conditions stated above. 489 672 685

If a driver loaded a greater weight on a camel than that permitted by the owner of the fallen animal, for example 648 lbs. instead of 576 lbs. (1) the value of the fallen camel is divided into as many

1. Every camel has a known lifting capacity. Some carry only up to 432 lbs., others up to 648 and even to 720 lbs. The average weight without straining is about 500 lbs.

parts as there were pounds in the load, and the driver is required to pay as many parts as there were extra pounds, in the given example, two parts.

The owner of a spring and a well can refuse to give a caravan a place for a halt and water, because of its inadequacy for his own needs, and for other reasons. It is impossible to complain about this in court. But if an owner with extra space does not allow a caravan to come in in winter during bitter cold, and people or livestock freeze as a result, customary law asks wergeld for the people and the payment of the value of the livestock. 489 [423]

Now drivers are not willingly permitted to stop near a village, for a loss may occur in the caravan for which the drivers will blame the nearest village. [672]

In case of a complaint in court concerning a loss taking place between two villages, the biis make an inspection of the place and /140/ measure the distance of each neighboring village from the place of the loss by means of a rope. Then the village is accused of the theft, which is shown to be closest (Tergai). According to other sources, the biis do not measure the distance but accuse the village which is considered less dependable. (Report of the chief of the Chimkent uyezd, the biis Sagyndykov and Sultan Kanaev and other persons of the Chimkent and Kurama uyezds).

There are no drivers among the Kirgiz, since the Auliye-Ata Kirgiz have few camels.

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Folk custom not only permits but also obliges the persons who have suffered to avenge the crimes committed against them. The avenger is usually the person who has suffered, but a part or even the whole clan has a right to take part in the revenge. The entire clan considers itself obligated to avenge a case of the secret kidnapping of a girl by a Kazakh of another clan, or the driving away of a considerable number of livestock, which may belong to only one person, but one who is honored by his kinsmen. Also specific insults not only of an honored member, but of any Kazakh, which are made by a mob, call for armed defense and the resentment of the entire people.

The limit of the revenge is considered to be doing harm to the adversary on an equal level to the harm suffered from him. Then the hostile lineages or clans already take part in pacifying their members. But if the avenger does not cease to wreak damage on his adversary, he is subjected to fines of an atton or higher, and in extreme cases to corporeal punishment on the part of his kinsmen. The fines go for the use of the person suffering from superfluous revenge.

Peaceful agreements are permissable in every offense and crime. The fines in such cases (outside of court) go to the use of the person who suffered, or else, when they are considerable, they are divided among the closest kinsmen of the receiver.

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Although custom does have the concept of more /143/ serious and less serious crimes, it does not divide them into criminal and civil crimes.

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A crime which is committed with premeditated intent increases the blame. The commission of a crime with provocation, especially if it is called forth by the sufferer, lightens the blame. Circumstances which lighten the offense are: the thoughtlessness of the transgressor, or the honor and respect he enjoyed before the crime was committed. The commission of a crime in the steppe in an open place by day lessens the offense. A crime committed in a tent at night increases the offense. Poverty does not lighten the guilt. It does not excuse thievery, for example, for the clan is held responsible. A clan which has not helped a poor man, pays all claims against him three times, each time compelling him to reform, and forcing him to make promises on his oath. (1) The commission of a crime in a state of drunken-

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1. After the third time he is driven out. A poor man and a person without a clan gives up his daughter in place of money, and pays off the sum required of him from the

685 kalym he receives for her. But if he also has no daughter, he enters into the service of the plaintiff.

672 ness lightens the blame, and in the opinion of some, even frees the offender from a fine, and he is only obligated to pay for the damages.

Official persons are not punished more severely than private persons for a crime.

Crimes committed for reasons beyond the control of the person's will (illness, temporary insanity, etc.), do not bring punishment upon the persons committing them. In such cases the kinsmen are held responsible as not having watched over the activities of their sick fellow members and not having protected the sufferers from danger. Those who are insane from birth and deafmutes are not punished for crimes committed and their kinsmen are not held responsible for them. Offenders who are under age are not punished. Their parents and close relatives are held responsible for them. Husbands are responsible for the crimes of their wives, but the wives are not responsible for their husbands. The successors of deceased criminals are held responsible in property for their crimes. /144/ In general, the responsibility in property for crimes extends to the seventh degree of kinship inclusively.

685 In Makovetskii (Pt. I p. 81) we find that punishment is decreased when a theft is committed in a strange volost. Certain
672 biis of the Syr-Darya oblast disagree with this. They maintain that suits for theft should be judged with equal strictness, whether they are committed in an outside volost or in one's own, against the defenseless (for example, from children), or against the strong. (1)

1. Aleksandrov reports that the Kazakhs of the Kazalinsk uyezd steal livestock primarily from other clans and uyezds. The people are indulgent about this, considering it something which goes with youth, although they sometimes are reproachful about it in words.

673 Careless actions which result in damage are judged as crimes. Wealthy persons compensate for the damage with property, or for harm caused to the health they pay wergeld in the amount established by custom. These cases are called angsyzdan, and the people regard them more indulgently than they do cases committed for revenge or for other aims.

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for other aims.

Accomplices (sirek) of a crime are subjected to punishment, usually in equal amount, although differences are allowed according to the extent of blame (Kunakbai). The plaintiff can, however, in the absence of the accomplices of the crime, exact a penalty from the person present, obligating himself not to make any further suit (the biis' books of the Perovsk uyezd). (2) 672

2. It has now come into custom in the Perovsk uyezd to revenge oneself on one's personal enemies in the following fashion. If strong evidence exists against the defendant, the plaintiff names one of his personal enemies as an accomplice of the defendant, causing him unpleasantness and trouble about his oath. [578]

For the ringleaders (bashi or urybasy (3), i. e., those who first

3. According to bii Sultan, the word dzhortuulbasy, head of a gang, has not been used since the time the wars (yaugerchilik) stopped.

began to carry out the idea, punishment is not increased. (4)

4. It is said that the person who first committed robbery, giving rise to a long baranta, pays toguzy, while the others, who are guilty of taking strange property are sentenced to muynyna kosak kutine terkeu (cf. Chapter XII).[1]

According to another opinion, the ringleader is usually called into court. He pays the entire penalty, and can then /145/ split it up among his accomplices. Now they interrogate the ringleader who is called into court about his accomplices as well, in order to call in all of them. If they do not find all of them, they penalize those who are found, requiring them to split it up with the rest and recording this obligation into the report of the judgment. The distribution of the fine among the defendants is left to them. If they cannot come to an agreement, the bii apportions the payment of the value of what has been stolen, in accordance with how much each person took for himself, and the fine is divided equally.

[1] [Cf ect. 116, pp. 200-207 -- A.]

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685 The person under whose instigation and advice the theft was made, pays a fine, after which the thief returns the object stolen without a fine (Perovsk uyezd). According to bii Sultan, instigation and calumny is a sin which God never forgives (kudanyng kechpes gunasy). There are now many instigators (azgrushi) and tell-tales (suztasushi). The biis do not believe them. In confirming the proverb entered in Makovetskii: "He who ordered the beating is not punished, he who did the beating is punished" (ur degenge zor kel'mes, urganga zor keler) bii Sultan Kanaev says that the instigator escapes punishment because he will not acknowledge his instigation, and that even though the instigation can be proved, in general it is better to impose the punishment on the actual criminal. E. A. Aleksandrov also reports that the instigators and those assisting the crime are not recognized as guilty by custom.

Those who conceal crimes and transgressors, or objects obtained by crime are called to responsibility equally with the criminals themselves. The receivers of persons under suspicion are called to account like thieves. Unconscious concealment is not persecuted. Not giving up a thief, even though he be one's own son or father, is considered being his accomplice. The person who saw the crime but did not speak of it in the inquiry is also considered an accomplice (Perovsk uyezd). According to Kunakbai of the Auliye-Ata uyezd, the person who conceals property pays nothing, and if he was sentenced to pay an atton, for example, he can demand its return from the thieves. The person who conceals /146/ the thief himself does not pay. "A reprimand of him would be useless," added the bii.

Connivers and the other persons implicated are not subjected to any penalty, but they do not escape the inquiry and a reprimand (Perovsk uyezd). They are called kumekshi. The kumekshi is not a thief, but is not clean of thievery (kumekshi ury imes urydan kuru imes) as bii Sultan Kanaev expressed it.

673 The number of acts which are not considered reprehensible, or which are not prosecuted by customary law even though reprehensible, is considerable among the Kazakhs. (1)

1. In Makovetskii, Pt. I, p. 60 it says: The comparatively low level of culture of the Kazakhs not only explains their general view of criminal activity, but also their attitude to many acts which are prosecuted among civilized societies, and which are considered fully lawful among the Kazakhs.

681 Reimbursement of damages is required for every kind of infliction of loss, damage to objects, etc., if it took place as a result of carelessness. For wounds and similar bodily injuries, the medical treatment and the support of the injured person is at the expense of the guilty person. If evil intent is observed in this, a fine is imposed to the value of the damages, in addition to the damages.

We append examples:

682 1) Clumsy medical treatment. A doctor (taub) who heals clumsily is suspected of evil intention, but he is not called to account. Only the expenses for the funeral (as su) of a patient who died can be referred to his account. He answers for it in the future life (akhiratda zamin).

2) Being bitten by vicious animals. If the owner of an animal did not know his qualities, he does not pay the expenses for the healing of the injured person, and for the damage suffered (bite, tisteb algan, dislocation, mirtildy, death), for "the animal does not know what he is doing." However the animal itself may be adjudged to the sufferer. But if the owner knew that his animal was dangerous to human beings, (adam khur) he should have either kept it tied up or slaughtered it, or sold it at a distant bazaar. For not having taken these precautionary measures, nor having kept an eye on the animal known to be vicious, he pays for the damage caused by it /157/ (Torgai and others), or a full wergeld to the report of Baymet Sagyndykov.

If a mounting camel or stallion bites or kills someone, the animal itself is given to the person who has suffered. Wergeld is not exacted.

If a camel walking about untethered bites someone, he is surrendered in place of wergeld. But if a person rides into a village on a camel and it bites someone, the rider pays a full wergeld. (1)

1. The owners are not held responsible if the animals bite each other. Only children arrange a fight between animals (talasteru) and they are not held responsible for damage (Perovsk uyezd).

685 3) Injury to strange animals, cutting out the tongue, disfiguring their appearance, is punishable by fine, and if the owner of the animal consents, by the buying of the animal from the owner for its original price. If the injury resulted in the death of the animal, its value is paid (Perovsk uyezd).

Animals are subjected to having their tails cut off for cropping grass from strange fields. But the owner of such an animal has the right to start a suit for disfigurement, in which case he himself pays for the damage from grazing (Kazalinsk uyezd).

There have been cases in which the owner of the animal with its tail cut off died a natural death during the period of time before the tail grew back. His heirs had the right to demand wergeld from the guilty person, as for murder. (Kazalinsk uyezd).

4) Arson. The person who sets the fire is sued for the total loss, for example, the value of the house or of the material and the wages of the workers, if he cannot clear himself with an oath. He is also required to pay a fine of one-tenth the value of the property. (2)

2. In the Chimkent uyezd the fine for setting a winter camp afire, for brigandage and for baranta is equal to wergeld for a man.

Suits concerning arson are investigated strictly (Katta suraydy) and are not settled without oaths, solely by testimony of witnesses. For unpremeditated arson a fine is not imposed, as is the case in all /158/ unpremeditated misdemeanors (yazym), which came, as they say, from God (kuday kykdyrgan).

Fires are permitted, to clear the steppe of the tough grass the previous year, which the livestock do not wish to eat, and also for the fertilization of the land to be ploughed. Such fires are forbidden in ploughed fields, hayfields and around buildings. In the Kurama uyezd, the testimony of four dependable persons is enough for conviction for intentional arson, requiring the payment for the damages and a fine equal to this (tengurtak). For example, for a loss of 400 rubles, the fine is also 400 rubles. Wergeld is paid for persons lost during the fire.

5) No punishment is given for deceit. The property taken by deceit is simply returned.

The following are examples:

a. A gift (syuyunchi) received for the report of false news is returned. They are scolded with the word muttakham (dishonorable), etc.

b. Money demanded in the form of an order by warrant, etc. is returned. Trust is forfeited.

c. There is no suit for denying one's own stamp /tamga/ (Abdrakhman).

d. For the affixing of a strange seal, and for every sort of fraud

placing a brand on a loose animal a fine can be imposed of half the value of the animal. Placing one's brand on an animal with one for safe-keeping, is not considered reprehensible if such a one is returned on the first demand. According to Kyulbaev (of the Kurama uyezd), putting one's brand on a strange animal unnecessarily (bikerge), whether it is a loose animal or one received for safe-keeping, is punishable by a fine of 20 rubles. According to the Kirgiz Daniyar, placing one's brand on a strange animal is considered as clear (zakhir) stealing, and is punished in proportion to the penalties of the assemblies (siez kesimi menen) i. e., for one sheep 4 sheep must be paid and 4 rubles in addition. 685

The owner of the lost object usually appears before the person suspected of the theft accompanied by two or more outside impartial persons (khalis ksi), exceptionally, only one, and searches (tentedi) him. The outsiders serve as witnesses. If the suspect does not permit himself to be searched (tentkizbese), he is considered to be guilty. 685 627

When a thief is caught by the owner of the stolen livestock, he usually gives up or promises to give up everything which was stolen by a certain period of time, often according to a voucher, asking only that no suit be charged for the exaction of the usual fine. The owner may be satisfied by the return of his property and by taking away a horse or a coat, i. e., atton (1) from the thief, as a reward

1. Sometimes a horse and gun or some other object is taken under this name.

to the captor.

When there are several thieves, the one who is at hand is held responsible. When only the father of the thief is at hand, a suit directed against him is accepted by the biis for trial, on the basis of responsibility by reason of kinship. 685 672

/167/ If a thief rode a strange horse when committing the crime, the owner of the horse is a participant in the theft.

If the plaintiff confirms the fact that when the defendant was caught the latter gave him money in order to end the affair, and if later the accused clears himself by an oath, the money in question is ruled to the defendant. 685

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According to the communication of Sultan Daulet Bushaev, a thief from a distant place, whom it would be difficult to find again, 697

697 is imprisoned at night in a pit which is covered by a grating, and someone sleeps on top of the grating. He is not kept in the tent lest he kill someone, flee, cause a disturbance, and among other things, do wrong to someone. They put horse locks (ksen) on the legs of a thief from a nearby place, passing them through the sidepiece of the tent at night, and pemitting him to walk about in them during the day.

Among the Kirgiz, captured thieves are bound and then subjected to corporal punishment (dzharb kursetedi) until /vpred'do/ the affair is investigated by the bii. Without denying the injustice of punishment before the judgment of the affair by the bii, Kunakbay (Auliye-Ata uyezd) justifies this custom for those cases where the thief is caught red-handed or was armed with a spear or an ax (aybalta).

If the thief is caught in the act of stealing and refuses to go to the nearest volost official, arguing that he is innocent, or if he attempts to flee, then he is bound. If the thief continues to deny his guilt after that, or to make various claims, he is beaten in order to force confession (chiningdy ayt). The volost official to whom they take the prisoner asks him such questions as: "Are you a thief? Where did you steal from? (or come from). If you are not a thief, clear youself and I will let you go free. But if you did steal, I will give you over to the owner of the stolen goods." The thief is transferred into the hands of the owner. The owner of the stolen goods keeps the thief in his tent until the presentation of his suit /168/ in court. The prisoner is kept bound or in general in such a way that he cannot escape (kitpes kylyb baylaydy) his legs are fettered (ksen salady), and also he is beaten, but not much (kub savamaydy). They do not beat or abuse a well-known person(bilimdy ksi). A bii does not accept complaints from the thief for blows, saying: "That is your punishment (dzhaza)". (Communicated by bii Abdurakhman, Auliye-Ata uyezd).

694 If the thief is captured while stealing at night, his captor confines him in the tent and interrogates him: "Why are you stealing?
672 Was it not you who also stole what was lost last year and the years before?" Bound and confused, the thief often confesses, while being beaten, to all these crimes, of which he is completely innocent, and of which they accuse him only in order to frighten him. Later they inform the volost official of his confession and send him the thief himself. The volost official also holds the thief in confinement, interrogates him and notifies his relatives. The best people from among

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his relatives appear and say to the volost official: "Give up this thief to us. We will interrogate him well. If he is guilty of something we will make him pay for it. If he is innocent we will present you with proof" (bul uyyny bzning kolymyzga ber, muny abdan khub suralyk; algan bulsa, maldy alyb berelik, almagan bulsa, almagan iken dib sizdi isenterelik). In agreeing to give up the prisoner, the volost official takes a receipt (tilinen khat) for the fulfillment of the promises mentioned above.

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The owner who has already received his property can receive a supplementary atton from the thief. Sometimes the biis and aksakals among the relatives of the thief say: "He is innocent of other thefts (uzge maldan) take atton from him and give him a voucher for the fact that you will not open suit against him for anything lost" (falan vakytda dzhogalgan degen maldy suramaska), or else: "But if you are thinking of opening a suit, give us back the atton you took from us." They never take the atton anymore, however. This custom existed under the Kokandians and khans. In this way, as was explained above, the thief was often released without bringing him to a court examination (Torgai).

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/169/ A candid confession does not lighten the punishment. On the contrary, when the bii sees the offender acknowledging the fact of his commission of the crime without shame, he may considere him a hardened ruffian or a professional thief and impose a higher fine because of this, or punishment by whipping. (Mikebai, Perovsk uyezd).

The plaintiff for his part, seeing that the defendant confesses from honesty and straightforwardness (er iken, muynyna, alyb otur, chinin aytty) can resign from the whole suit or part of it (Perovsk uyezd).

When there is a voluntary confession (azamat iken, uzi kelib aytty), with or without a court summons, the punishment can be reduced, and in view of repentence, completely forgiven, but only with the consent of the plaintiff (Auliye-Ata uyezd).

If a defendant denies the fact of his confession at a previous interrogation by a village elder, confirmed by a written act, the biis consider it possible to require a purificatory oath, as with a simple disavowal.

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Stealing with house-breaking or without house-breaking, from a trunk and from an open place are punished alike (Torgai). (1) There

1. According to Makovetskii, Pt. I, p. 81, the easier a theft is, the more shameful it is considered. On this basis

695 opposing side, for example, of the defendant (dagvagerining tang-lauyncha).

The interrogation of witnesses with an oath is necessary in criminal cases, naturally, only when the defendant pleads not guilty. In civil suits if a witness was not only present, but was also invited as a witness in the conclusion of an agreement, the transmission of money, etc., he gives testimony without an oath, even though the defendant denies his guilt. Once both sides have agreed on one and the same witness, the case is decided on the basis of his words, and one side can no longer bring an exception against it afterwards.

The refusal of a witness, not from support of his own words, but of the solemn confirmation of them by presenting the oath, is now considered as a conviction of his side (Umurbek).

According to Torgai, an oath is required from a witness when the litigant declares him to be partial (spur, i. e., disputable).

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67½ There are two kinds of guarantors: 1) tankefil' (1) or erefil',

1. According to Aleksandrov, tankefil' means unfaithful, so that it should be pronounced tanykefil'.

2) zarkefil' or malkefil'. The former engage themselves to present for confrontation (taub beredi): suspects who are under investigation and trial, or thieves or criminals, including those under sentence, and also in the case of non-fulfillment of some sort of pact. The latter are held responsible with their property when such persons fail to fulfill pacts and obligations. Guarantors of the second type are usually karavanbashis, while guarantors of the first type are the relatives who take a thief from the hands of the volost official for correction.

Both types of guarantors are characterized, according to Makovetskii and according to bii Sultan, by the saying: "a guarantor dies for a man, /194/ and pays for property" (erge kefil' uledi, malga kefil' tuleydi).

Both sides can have one and the same guarantor. The death of a debtor (karzdar) for whom a zarkefil' has been guarantor, does not relieve the latter from his property resposibilty for the deceased. A guarantor who has paid for the obligations of a negligent or deceased debtor can open a suit for the exaction of the losses from the heir.

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The tankefil' is not held resposible for the death of a man released on bail. If he flees, the tankefil' is sentenced to the same sentence which had been imposed on the person who fled. But according to Aleksandrov, the tankefil' is held responsible according to agreement.

When a middle man becomes a zarkefil', both sides pay him kafiliane for this. This happens in obligations of debt.

If a person who has bought stolen property unknowingly has it confiscated, he turns to the person who sold it to him. If the seller declares that he did not sell it, and there were no witnesses present, then they require him to swear an oath to clear himself. The guarantor pays after the oath is sworn. If the guarantor denies that he guaranteed it, they also require him to swear a purificatory oath.

Sometimes the owner of a thing given out in debt touched the arm (bilek - from the elbow to the wrist of the arm) of the guarantor. If the fact of this contact is beyond doubt, on this basis the bii sentences the guarantor to pay the debt because of the insolvency of the debtor (Perovsk uyezd).

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Among the convincing proofs in a trial are: the confession of the defendant, contradiction of testimonies during interrogation, the generally known corruption of the accused, his disposition for lying, the absence of definite occupations, capture on the spot of the crime, the finding of the lost property with the defendant, fresh tracks leading from the place of the crime to his tent, his flight from the trial, his non-appearance at the trial, the testimony of witnesses, every sort of written document, etc. In the Perovsk uyezd one case of wergeld was broken off on the basis of the testimony of a Russian doctor that death was by natural causes, and not /195/ the consequence of blows. In the Kazalinsk uyezd the chief of the uyezd transferred the case of Suleiman Burdzhanov, who lost an eye in a fight, to an extraordinary session, on the testimony of a Russian doctor. (1)

1. In the Kazalinsk uyezd there was a case in which biis required wergeld in spite of the testimony of a doctor who stated that the loss of the eye was due to illness.

Convincing evidence loses force when the defendant denies the fact of confession, capture, the finding of tracks, the giving out of

693 arrangements.

When a suit or part of it is abandoned without consequence because of distance or some other reason, a biilyk is not collected.

A biilyk is not taken when a session is abandoned by force of an earlier decision. Also when an earlier decision is overruled, the biilyk received for it is returned.

When the bii decrees that the period of time of an oath is to be extended because of the illness of the swearer, he receives biilyk for this labor.

According to bii Sultan Kanaev, of the Chimkent uyezd, a biilyk is not taken even in such cases where the defendant clears himself by oath. He pays only about 20 or 40 kopeks then, up to one ruble, for receiving the document of acquittal from the bii with the affixing of the seal. This collection is called mukhrana ("for the seal").

681 /198/ Losses and court costs (chygyn) are included in the fine itself. When the fine has already been obtained, the biis can refuse a suit for the recovery of court costs, with the exception of cases concerning wergeld, for in such cases many people are summoned into court, and the cost of the summoning adds up to a considerable sum which cannot be covered by a part of the wergeld. (1)

1. According to Torgai, the expenses for a suit concerning wergeld can be separated from the wergeld. All pay equally for the wergeld /po khunu/, but for the expenses the guilty party pays first of all, and then the clan, and the latter pays only when the former already has no property left.

When a suit ends without a fine, the winner of the case seeks reimbursement for the losses and court expenses which he has also been required to pay in one session of the court or another.

69½ The period of time for the payment of the fine is recorded in the document of the judgment, but this measure appears in part to be inoperative. The customary law does not assume a period of time.

696 In the case of the defendant's insolvency or his absence, the exaction is extended to his group of ten (unbasilas), and when their 697½ means have been exhausted, to the group of fifty, then to the village, which is noted in the document. (2) Only that which was necessary for

2. In ancient times when the payer was insolvent, the group of ten, or fifty, etc., in order, did not pay for him.

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but his entire lineage or entire clan directly. For example, in the case of insolvency of a defendant from another lineage but the same clan, the plaintiff received the exaction from the entire lineage, but when the defendant was from another clan, then he obtained it from the entire clan.

life was not taken away.

When the defendant is insolvent, if the sum of the fine is large, for example 1500 rubles, it is decreed to be paid directly by his group of fifty and his village, by-passing the group of ten.

The exaction is not extended further than to that circle upon which the oath was imposed.

An exaction from a cummunity in the order established by the biis, takes place on the basis of an apportionment made by the community itself among the tents (biiding tygyzdauy, khalktyng uigaruy buincha).

A community can refuse to pay the exaction for its member, forcing him to become a laborer. 672

/199/ Requiring the payment from the community is regarded as reasonable in that the clan which fears paying for a thief restrains him by moral influence from repeating his stealing. At the present time the imposition of property responsibility on the community is an outlived principle, since 1) the individual has freedom of action and is not obliged to ask permission of his neighbors before coming and going; (1) 2) as a consequence of the changing conditions of

1. The individual is free to be absent temporarily, but for transferring from one volost to another he remains completely dependant on the clan, which can fail to give its consent for his discharge. The poorest clan keeps a vigilant eye on its solvent member, whom it needs, not even speaking of charitable purposes, directly for the payment of taxes for the impoverished.

life, property among the Kazakhs is associated more and more with the individual and the close circle of the family.

If the defendant is a new arrival, the sentence is extended to his fellow travelers fellow tradesmen, and domestics (kosdas). If none of these exist or they are without property, the defendant can be given out as a laborer.

The decision of the court was formerly executed by riders of 666

in Makovetskii, Pt. I, p. 71. This ritual does not exist in the Turkestan region, as is evident from the words of Sultan Kanaev: this is anarchy (nizamsiz), the act of people who are not subject to any chief (ishbir khakimga karamagan adamnyng esi).

Wergeld is paid and received not by a person but by a clan. If the murdered person and the murderer are from one clan, then it is paid and received by the lineage, if they are both from the same lineage, by the sublineage, etc. For example, if one is of the Bisata lineage, the other of the Yamanbay lineage (both these lineages constitute the Kutenchi clan, of the main clan of Kungrat), in the Chimkent uyezd all five volosts of the Bisata pay, and all five volosts of the Yamanbays receive the wergeld. The wergeld received, taking out 100 to 300 rubles for funeral and memorial services, is distributed among the volosts, then among the villages, etc. The close and distant relatives of the murdered person and the murderer, rich and poor, must pay and receive equal shares. Even though the clan of the murderer be /234/ far away or scattered over a large area, nevertheless demands are sent for the payment of their shares of the wergeld, authenticated by the affixing of many seals. Now the distribution of the wergeld received is not above abuse from influential persons.

Wergeld is not exacted when there are no kinsmen to act as plaintiffs.

According to Torgai, the rule "blood for blood" (khunga khun, kanga kan) was observed earlier in several places. Even now in the Kazalinsk uyezd the clan of the murdered person tries to commit murder in order to take blood for blood, but they are not permitted to do this, for people say: "It happened by the will of God." In general the custom of taking blood for blood no longer exists.

Now, if the community on which the wergeld is imposed is insolvent because of its small number of people, none of them is killed and the community is simply considered to be in debt. (1)

1. It is said that in Bukhara there is a custom of collecting alms for the payment of wergeld.

Those who draw together to pay the wergeld and also to receive it are called comrades in the wergeld (khundas). It is practically impossible to refuse to take part in the apportioning (shesken) of the payment of a wergeld. If one did, they would not give him a share of wergelds received and would not participate in the payment of wergeld for his own commission of murder.

681 If a small community, living in the midst of a community of many members, but not related to it, takes part by some chance in
682 the payment of wergeld for a murder committed by the large group, then both communities are considered khundas, and this numerous clan
672 must pay for a murder committed by the small community. If it refuses, the small group reminds it that they once were khundas. If the large group is still not inclined to take part in the payment, the community which is under fine is left to take a copy of the judgment and to send it along with a demand for participation /235/ in paying the wergeld to the place where the rest of their clan lives, to their motherland, so to speak. At first these are unwilling to pay, and scold them: "Why did you go away from us", but finally they do pay nevertheless.

In Kurama wergeld is not exacted from the clan but from the family: from the father, the brother and the uncle (akesi ukesi, amekesi kuyadi). Formerly there was killing for insolvency.

In the Auliye-Ata uyezd the wergeld is imposed in this way: after deliberation between the kinsmen of the payer of the wergeld, a part is assigned to the defendant himself, while the rest is paid by his kinsmen within the degree of kinship to which it is forbidden to marry. They divide this part among them.

681 The amount of wergeld for a man is the same, whether he be a
682 sultan, a hodja, a guest, a thief, a child, an adult, (1) etc., in accordance with the proverb: "The wicked and the good are equal once after death (i. e., their wergeld is the same), and another time during life" (i. e., abuse can affect everyone equally) (yaman ksi yakhsy ksige ulgende br teng keledi, tirisinde br teng keledi).

1. In the article by Gotrovitskii, "Okonchanie del polumirom po kirgizskomu obychnomu pravu" /The ending of cases by polumir /cf. below/ according to Kazakh customary law/, (Iuridicheskii Vestnik, May, 1885, p. 194), it is stated that if the widow of a murdered man remains without means with a female child, and if the murdered man had no brother whom she could marry, then she must receive 50 horses, without any concessions. But if she is young and has a male child and consequently can count on marrying one of her husband's kinsmen, then when the case is decided by polumir (karyndas kyb)i. e., with the full confession of the murderer that he has committed the crime, the payment to the widow must be limited to 25 horses.

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If one is to believe the claims of the sultans, for the murder of a sultan or a hereditary bii the wergeld paid is one and a half the usual amount, namely 6 yakhsy are added to the 6 yakhsy. (Communication of Sultan Daulet Bushaev).

For the murder of a woman, including one's own wife, half a wergeld is paid.

For a murder committed by a woman, full wergeld is paid.

For a murder committed in a drunken state, the wergeld is unchanged.

For unpremeditated murder wergeld is not customary, but only /236/ a gift of clothing and covering the expenses for burial and memorial services (asatau).

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If the murder occurred in self-defense, this must be proven before the plaintiffs in order to be freed from the payment of wergeld. However it is still a disputable question whether wergeld should be paid in such cases, i. e., when the murdered man was a thief, not allowing himself to be captured, or some other criminal defending himself by arms against the rider who has been sent to arrest him, or a bandit who is the first to start fighting. The plaintiffs demand the payment of the full wergeld, offering on their part to pay the fine for the attack, fighting, stealing and in general the offense which is acknowledged for the murdered man. They support themselves by saying the defendant is entering a false accusation against the murdered man, in order to avoid paying the wergeld. According to Mikebai, wergeld must be paid for the murder of a thief, even if he started the fight, if he was not the first to use a weapon. Wergeld, however, does not need to be paid for the murder of a thief, if he was the first to begin armed resistance.

E. A. Aleksandrov reports from the Kazalinsk uyezd that self defense in case of the attack of plunderers and outlaws is permitted only in a measure which is not criminal. But if the defender strikes the attacker, even though unintentionally, and it results in death or injury to a part of the body, the person guilty of this pays wergeld, while at the same time the plunderers bear responsibility for the damage by them.

If the murdered person is an orphan living with his step-father, his clan demands nevertheless that wergeld be paid for his murder. In the absence of the clan, the step-father can demand wergeld in the name of the younger brother of the victim, but must put the wergeld received to one side, to be given to the clan of the victim on their first demand (Kurama uyezd). According to Khalmakammed

681 of the Chimkent uyezd, the mother may receive part of the wergeld at
682 the will of the kinsmen. She can pay part of the wergeld, if she wishes, for a murder committed by this orphan.

672 If a servant of a rich man dies and his heirs /237/ seek wergeld from the master, the biis examining the case must find out as their first duty whether the man froze to death for lack of clothing, or died of hunger, or was killed stealing or while engaged in other pernicious pursuits. If it can be proven by the testimony of witnesses that the death was caused by one of the above-mentioned circumstances, then the owner must pay the wergeld. But if the death occurred for one of these reasons and a dispute arises because the side does not confess, then four persons from the side of the defendants must swear an oath, or if a woman has been killed, two persons.

According to the biis Sultan Kanaev and Khalmakammed, if a servant who is traveling in pursuit of thieves or enemies is killed, it is impossible to demand wergeld from his owner, even when the murderer belongs to a tribe like the Kalmuks, from whom it is unthinkable to demand wergeld.

681 For a murdered man, according to the communication of Baymet
682 Sagyndykov of the Chimkent uyezd, 1000 Shariat tillias are exacted of 10 tengas each, and if one counts each tillia at 4 rubles, as is customary, then it is 500 tillias or 10,000 tengas. If it is paid in livestock, then 100 camels must be paid. Absalyamov reports for the same uyezd that 100 horses and 100 rams are paid for a murdered man, or 600 tillias in money. Mullah Shanchi Chinybekov of the Auliye-Ata uyezd reports that for a murdered man from one to one hundred years of age, the wergeld consists of 200 mares, and for a murdered woman from one to one hundred years of age, the wergeld is 100 mares.

There are cases in which influential relatives succeed in exacting 3-5 wergelds for one murdered clan chief. For example, in the Auliye-Ata uyezd a total sum of 1,300 tillias and one girl was exacted as wergeld and expenses, from 500 tents, for the murder of an honorable personage of the white bone by the name of Yalangtash.

According to Sultan Daulet, the former wergeld for murder was of two types:

/238/ First Type

1) 1000 sheep = 1000 tillias = 2 girls.

2) 6 yakhsy, i. e., 2 slaves, 2 dromedary camels (nar) and 2 good horses. Wild animals such as a fox, wolf, antelope, etc. could be substituted for horses.

The withdrawal of trust (isenimsizdik) is not imposed by the court but is a natural consequence of a crime. Every blameworthy misdemeanor is accompanied to a greater or lesser degree by a forfeiture of trust. 681

The Kazakhs, like the Kirgiz, did not betray criminals in their midst, for specific fines exist for crimes. But the Kirgiz sold criminals to the Kazakhs and vice versa, and also the Sarts sold them to the Kazakhs and Kirgiz for a ransom, i. e., a fine, the sum of which was not determined by custom but was designated arbitrarily. If the kinsmen could not pay the sum demanded, because of poverty, or did not wish to because of repeated stealing, this gave the right to kill the criminal.

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/249/ Entering a tent.

To ride past the doors of a tent (aldynan yuru) and not behind it, is considered impolite. If a newcomer stops only at the very doors, having already passed two panels / reshetki / of the tent (yeki kanat kerege), they say to him scornfully: What do you think you are, a chief? 596

It is necessary to stop and tie the horse behind the tent, and then to call the masters with the words: Syuyles! Adam barma? (I wish to begin a conversation; is the master here?). But this custom is now observed less strictly.

If a horse tied up in front of a tent kicks a child, a fine is paid of 1/4 the value of the horse, i. e., 5 rubles (because the leg is one of four extremities), while if the child is killed, a full wergeld is paid. But if the horse kicked it behind the tent, the fault is laid to the child which went back there. Even if the horse kicked it to death, only the value of the horse would be exacted, or if there were aggravating circumstances which were the fault of the horse's owner - 1/2 a wergeld. [672]

Entering a tent in the absence of the owners (otagasy) by one who is not a relative, is not regarded as nice. He is reminded of the fact that in case of loss the suspicion will fall on the person who has entered.

Unfastening the doors (of reeds - esik, of wooden folds - ergenek) in the absence of the owners is regarded as an act which

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354 The hearth, around which the Kirghiz /Kazak/ love to sit, not only when eating, but also when conversing, is called "otbosy." There is a concept of happiness connected with it, and for this reason a sacrifice is given to it on certain occasions (see wedding).

342 708 The yurt plays an important role in the life of the Kirghiz /Kazak/. The paternal yurt ("ul'kun chengarak") is considered sacred. Judgments of important /208/ questions affecting the whole clan take place in it. The wife of a son who has received his [606] allotment is obliged to come to his father's yurt after the birth of a child, to bow there three times, and to put fat in the hearth. [782] The Kirghiz /Kazak/ often swear by the yurt ("kottukadam uyumde aiz etemen, ar' kimnei uz' de uzike meshet'" -- "I swear by the sacred yurt, my yurt is a temple of God").

Kirghiz /Kazak/ children by a yurt (from a photograph by Bebenin).

342 672 Any person in a yurt is considered to be under the protection of the master of the yurt, and [291] [492] [516] → to offend the former is to insult the master. It is the custom, for example, to hitch gift animals to the door of the yurt, and if any sort of misfortune results from this (for example, if a horse kicks someone who is passing) the master of the yurt does not answer for it. And if something bad is caused by the horse of a newcomer, the latter answers for this before the court of the biy, since he is required to hitch the horse at the back of the yurt.

342 In general the yurt plays an outstanding role in the life of the Kirghiz /Kazak/, since it is the place where he passes his entire life and where his family relationships and those of his everyday life take their form.

602 relationship, a man must now be aware of, respond to the economic and legal implications of, a relationship through the mother's sister. In the light of this, we must re-examine the lines of consanguinity, and we find that the agnatic line no longer satisfies all the relationships involved, or even the major proportion of them. Descent is significant in the light of the data here presented through the grandfather in general, and not through the father's father alone. A man can call on me for help if he shares a common grandfather with me, and conversely, I can call on him. This is a cognatic relationship, and not at all an agnatic one, which in the present context is of considerable theoretical interest.

●67a 681 593 A final relationship between the kinship system and the law on the steppe which is to be discussed is the legal personality of the family. The family was a person before the criminal law of the Great Horde, as it was in other parts of the steppe. Thus, if a father killed his son, no legal proceeding could be undertaken against him; nor could the law intervene if the son killed his father. The family unity could not be invaded, that is, by outside forces. Again, if the father was alive, and a brother killed a brother, the legal process could not intervene; and even if the father were dead and the sons had moved apart, only a small sum was paid to the family of the victim, more a token payment than a true wergeld.[165]

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[165] Ibid., 15-16.

Moreover, the family acted as a personality in paying or receiving the wergeld: it was liable to penalty or indemnity as a unit. To this conception we add in corroboration the family as a personality in the marriage practices of kalym, levirate and the marriage agreement itself.

The Middle Horde

The Middle Horde, Kazakh orta yüz, literally Middle Hundred, nomadized on the steppe north of Lake Balkhash as far as the upper course of the Irtysh River in southern Siberia. From the viewpoint of European Russia, it was less distantly removed than the Great Horde. In territorial expanse the Middle Horde was smaller than the Great Horde, but larger than the combined Little and Inner Hordes. Numerically it was the largest of all the hordes considered separately in the 19th century; it was estimated in the 1830's at 165,000 families, approximately, and at about the same number at the end of the century. Thus from Levshin's day in the 1830's to Radlov's in the 1890's, it showed no absolute change at all, whether of increase or decrease, while compared with the other hordes it had suffered a relative decrease.[166]

Unlike the Great Horde, the Middle Horde had no

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[166] Levshine, 300; von Hellwald, 20; von Lebedour, II, 450; Schuyler, I, 34; Lansdell, I, 303-304.